IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5121 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

AMARSING RAMJI DOD

Appearance:

MR HARDIK C RAWAL for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/06/2000

ORAL JUDGEMENT

1. Challenge has been made by this petition under Article 226 of the Constitution by Gujarat State Road Transport Corporation to the award of the 3rd Labour Court, Rajkot in Reference (L.C.R.) No. 255 of 1985 decided on 1-10-1986. Under this award, the 3rd Labour

Court, Rajkot ordered the Corporation to reinstate the respondent-workman with backwages and continuity of services in his original position. Costs of Rs.200/- has also been awarded in favour of the workman.

2. The facts of the case, in brief, are that the workman was chargesheeted on 25th February, 1984. This chargesheet has been given for his unauthorised absent from duty for the period from 14th December, 1983 to 17th April, 1984. The respondent-workman though admittedly received the chargesheet but he has not chosen to file reply to the chargesheet what to say to remain present in the inquiry. After holding an inquiry on the charges and found proved, he came to be dismissed from the services w.e.f. 2-5-1984. The respondent-workman raised an industrial dispute and the matter has been referred to the Labour Court for adjudication and under the award he has been ordered to be reinstated back with backwages and continuity of services. Hence, this special civil application.

3. The petition had come up for preliminary hearing in court on 30th September, 1987, on which date, notice was issued to the respondent. Ad-interim stay in terms of para-9(b) with a direction that the petitioner will follow the procedure in payment of wages as per section 17(B) of the Industrial Disputes Act has also been granted. On being asked by the court, learned counsel for the petitioner fairly submits that after the order of this court aforesaid in this matter, the workman has been reinstated back in service. The matter has been admitted by the court on 28th June, 1989 and ad-interim stay of the award of the backwages on condition that petitioner-Corporation deposits 50% of the backwages awarded by the Labour court in the Labour Court within six weeks from that day was ordered and liberty was reserved to the respondent to withdraw the same. Backwages from the date of the award till actual reinstatement was ordered to be paid by the petitioner to the respondent.

4. Learned counsel for the petitioner contended that the Labour court has committed serious error of jurisdiction in ordering reinstatement with full backwages of the respondent workman. In his submission, inquiry which has been conducted by the petitioner was not held to be illegal or vitiated for not observing the principles of natural justice. The counsel for the petitioner submits that the workman-respondent has not questioned the validity of the departmental inquiry conducted against him. It has further been contended

that the workman has not participated in the inquiry. He has not produced any evidence whatsoever of his absent. The medical certificate which has been produced by the respondent-workman in reply to the show cause notice is of no substance. Lastly, it is contended that it is not a case where the absent period of the respondent has been regularised by the petitioner. Document on which reliance has been placed is an order whereunder the absent period of the petitioner from service has been ordered to be regularised by sanctioning leave for this period without pay. The error apparent on the face of the award is there as the Labour court has taken it to be a case of regularisation of the period and as a result of which to hold that the chargesheet does not survive. Concluding the submissions in all respect it cannot be said to be a case where 100% backwages should have been awarded to the petitioner.

5. Nobody is present on behalf of the respondent-workman.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

7. Annexure `B' on the record of this special civil application is an order of the respondent under the head : "Leave order No.-K 309 Rajkot City". It is further captioned, "the leave of undermentioned workers has been granted as shown against their names.". In this order at Sr. No.27, the name of the respondent-workman is there. Leave for the period from 14-12-83 to 7-4-1984 has been sanctioned without pay. This order is dated - -5-84. Last portion of this order is also very relevant, which reads:

> It is instructed that each of the above employees should present themselves at the place of their duties on completion of their leaves."

8. It has been put to the counsel by the court, but he is unable to give out on which date this order has been passed. However, from this order, I find that this period of absent of the petitioner has been regularised by grant of leave without pay. Once this has been done may be immediately after the order of the dismissal of the respondent-workman but the process would have been started much earlier to the date of order. Once, the petitioner has started the process to regularise the period of absence of the petitioner, I fail to see any justification in the action of the petitioner to dismiss

the workman from services on this ground in each and every case. In the present case, otherwise also, the respondent-workman has produced the reasons for his absence in reply to the show cause notice. Two medical certificates have been produced and therefrom I find that he remained as indoor patient with that Doctor as well as under his treatment as outdoor patient. This leave period is covered under the said certificates. Learned counsel for the petitioner has failed to show any ground to disbelieve these certificates of Doctor. It is true that before the inquiry officer, the respondent-workman has not appeared nor he has put any defence including these documents i.e. medical certificates but in the inquiry i.e. before completion of the same, he has produced these documents and the same are required to be considered. These documents, i.e. the certificates of a private Doctor are evidence and to not to believe it, the petitioner has to record cogent and justified reasons which are altogether missing in the present case. The absence, and more so, an unauthorised absence may be a serious misconduct and for which in appropriate case on proof of the same, workman can be dismissed but where the workman has furnished reasonable explanation for his absence, then it is obligatory for the employer to give out cogent and justified reasons not to accept the case of the workman concerned. That precisely has not been done in the present case. Otherwise also, after reinstatement of the respondent in services, on being asked by the court, learned counsel for the respondents has failed to show that his work was unsatisfactory.

9. Taking into consideration the totality of the facts of this case, and looking to the fact that by now the respondent-workman would have attained the age of superannuation also, I do not consider it to be a fit case where any interference has to be made with the award of the Labour court. Before the Labour court, I find that except the documentary evidence, oral evidence has not been produced by the petitioner. It is true that the inquiry was not vitiated and it is not held to be invalid by the Labour court but still the Labour court has all the powers to go and examine that the finding recorded by the authorities are supported by evidence or not. Learned Labour Court can also go on the question of the quantum of punishment. From the award, I find that the respondent-workman was having 23 years of services on the day on which the chargesheet was served upon him. This happened in the year 1984 and now we are in the year 2000. So 16 years may conveniently be added to this period of services and aggregate thereof come around to 39 years and possibly the workman would have attained the

age of superannuation.

10. The net result of the aforesaid discussion is that this petition fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

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zgs/-